

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA**

*In the matter of an application for mandates in  
the nature of Writs of Certiorari, Mandamus  
and Prohibition in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

**CA/WRIT/398/2022**

R. C. de Soysa  
No. 23, Paramulla Road,  
Pamburana,  
Matara.

**Petitioner**

Vs.

1. E. M. S. B. Ekanayake  
Secretary to the President of Sri Lanka,  
Presidential Secretariat,  
Galle Face Center Road,  
Colombo 01.
2. Hon. Attorney General  
Attorney General's Department,  
Hulftsdorp,  
Colombo 12.

3. S. Alahakoon  
Purported Chief Secretary-Southern  
Province,  
Office of the Chief Secretary,  
H. S. Dhanayake Mawatha,  
Galle.

**Respondents**

**Before** : Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel** : Sandamal Rajapaksha with Sachira Andrahannadi for the Petitioner.  
Sumathi Dharmawardena PC, ASG with S. Dunuwille SC for the  
Respondents.

**Supported on** : 25.11.2022

**Decided on** : 10.02.2023

**Sobhitha Rajakaruna J.**

The Petitioner was holding the post of Chief Secretary of the Provincial Council of the Southern Province from the year 2015 until the Petitioner was informed by the 1<sup>st</sup> Respondent by letter dated 16.09.2022 (marked 'P6') that his appointment had been terminated with effect from 20.09.2022. Thereafter, the 3<sup>rd</sup> Respondent was appointed as the Chief Secretary by His Excellency the President ('President').

The Petitioner is seeking for a writ of Certiorari quashing the decision and/or order communicated to him by the 1<sup>st</sup> Respondent by the said letter 'P6' to remove the Petitioner

from the post of Chief Secretary. The Petitioner alleges that such decision is illegal, ultra vires, unlawful, arbitrary, capricious and also against the principles of legitimate expectation. Further, a writ of Certiorari is also sought to quash the appointment of the 3<sup>rd</sup> Respondent to the post of Chief Secretary.

The Petitioner has taken steps to prefer an appeal to the 1<sup>st</sup> Respondent by letter dated 25.09.2022, marked 'P7', setting out his alleged grievance with regard to the decision taken to remove him from the said post. The Petitioner contends that there has been no allegation or reference to any wrong doing by him and therefore, there is no justifiable basis for his removal from office.

In a nutshell, the Petitioner's grievance is that he could not complete the full term of office as the Chief Secretary due to the termination of his appointment by the President. Moreover, the Petitioner pleads that he is entitled to work beyond 60 years of age in view of the Public Administration Circular No.03/2018.

The learned Additional Solicitor General ('ASG') who appears for the Respondents raising the following preliminary objections moved that the instant Application be dismissed in limine;

- i. Petitioner is not entitled to challenge the impugned decisions ('P6') in terms of Article 35 of the Constitution.
- ii. The Governor of the Southern Province is a necessary party to this Application and the Petitioner has failed to make the said Governor a party.
- iii. The Petitioner cannot maintain this Application as the reliefs prayed for in the prayer of the Petition are futile.
- iv. The Petitioner was employed based upon a contract of service and accordingly, no writ lies upon such contracts.

Now, I advert to the legal matrix in respect of the matters pleaded in the instant Application of the Petitioner.

In terms of Section 31 of the Provincial Councils Act No. 42 of 1987 ('Act'), the President shall appoint the Chief Secretary of each Province with the concurrence of the Chief Minister of that Province. The Section 32(1) of the Act stipulates that subject to the provisions of any other law the appointment, transfer, dismissal and disciplinary control

of officers of the provincial public service of each Province is vested in the Governor of that Province.

It is to be noted that the Petitioner does not assert that the power to dismiss him from service is vested with the Governor under the said Section 32(1). Anyway, it cannot be assumed that the Petitioner would be subjected to disciplinary control of the Provincial Public Service Commission to which the Governor could delegate such powers. It is clear that the Petitioner's appointing authority was the President and the Provincial Public Service Commission has no role to play in reference to the said appointment.

Although there is no direct application of the provisions of Section 36 of the Act to the instant Application, it is observed that the President has the authority, by virtue of the said Section, to make orders and take actions if any difficulty arises in giving effect to the provisions of this Act.

The cardinal argument of the learned ASG is that the Petitioner is not entitled to have and maintain this Application on the strength of the provisions of the Article 35 of the Constitution

35. (1) "While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity:

Provided that nothing in this paragraph shall be read and construed as restricting the right of any person to make an application under Article 126 against the Attorney-General, in respect of anything done or omitted to be done by the President, in his official capacity:

Provided further that the Supreme Court shall have no jurisdiction to pronounce upon the exercise of the powers of the President under paragraph (g) of Article 33."

The impugned order 'P6' has been issued by the 1<sup>st</sup> Respondent in respect of the termination of services of the Petitioner by the President in his official capacity. Thus, I uphold the jurisdictional objection raised by the Respondents as this Court has no jurisdiction to entertain any application against the President in respect of anything done or omitted to be done by the President either in his official or private capacity. However, as per the proviso to Article 35(1) of the Constitution, any person is entitled to make an

application under Article 126 against the Attorney General in respect of anything done or omitted to be done by the President in his official capacity. Having considered the jurisdictional objection as above, the requirement of examining the other preliminary objections of the Respondents would not arise.

Additionally, the Petitioner's services as the Chief Secretary to the relevant Provincial Council has been extended on 01.12.2021 upon reaching the retirement age of 60 years. The Petitioner has not provided adequate material to this Court to establish his claims under the aforesaid Public Administration Circular No. 03/2018.

In the circumstances, I proceed to refuse the issuance of formal notice of this Application on the Respondents.

*Application is dismissed.*

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**